Remarks

In view of the following remarks, Applicant respectfully requests reconsideration and allowance of the subject application. Claims 1, 9 and 18 have been amended herein. Claims 1-26 are pending.

35 U.S.C. §102 Rejections

Claims 1, 4-6, 8-9, 12-14, 18-19, and 22-23 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2004/0215715 A1 ("Ehrich"). Applicant respectfully disagrees. However, in the interest of expediting allowance of the subject application and without conceding the propriety of the rejections, claims 1, 9 and 18 have been amended herein

To avoid further burdening of the record, the previous Response submitted 5/7/2007 is incorporated herein by reference. On p. 11-15 of the previous Response, applicant argued that Ehrich is <u>not</u> interested in tracking clicks of selectable links.

In response to those arguments in the present Office Action on p. 28-29, the Examiner does not refute the arguments that Ehrich stops tracking when a link is clicked, e.g., affirmatively selection of the link to cause redirection to the location specified by the link. Rather, the Examiner comments:

As to point D, Ehrich et al. describes tracking parts of web pages by monitoring the user's interaction with certain areas on the page, these areas, for example, could be individual links. The broadest reasonable interpretation of the concept of "selecting" is interpreted to mean hovering over a certain link. With this interpretation, Ehrich et al. does anticipate monitoring the selection of links and modifying the original links to include code that will monitor the selection of these links and log the data.

Thus, the Examiner bases the rejection upon an interpretation that merely hovering in an area or over a link is a selection. Applicant disagrees with this interpretation and asserts that those of skill in the art would not interpret hovering over a link to be a selection of the link. Hovering with respect to a selectable link is understood as a passive activity in which a cursor is merely positioned or placed over the link. Hovering does not cause a selectable link to be activated. For instance, hovering over a link would not cause a browser to be redirected to a location specified by the link.

Selection of a link , on the other hand, would cause the intended function of the link to be activated. Selection with respect to a selectable link would be understood as affirmatively activating the link such as by clicking on the link, depressing the enter key, or otherwise activating the link. Thus, selection of the selectable link would cause a redirection to a location specified by the selectable link. Simply hovering over the link does not affirmatively cause the link to be activated. Thus, hovering and selection should not be equated.

Further, Ehrich itself uses both hovering and selection to mean distinctly different things. In Enrich, selection is used to mean affirmatively activating a link rather than passive hovering. *See Ehrich, paragraph [0035]*. Thus, the interpretation of selecting relied upon by the Examiner is not even consistent with the use of the term Ehrich. Nevertheless, clarifying amendments have been made to claims 1, 9 and 18, which clearly distinguish the recited selection from the hovering in Ehrich. For example:

Claim 1 as amended recites in part "injecting client-side tracking code into the web page, the client-side tracking code being configured to run tracking procedures on the client when one of said modified links is selected *to cause redirection to a corresponding location*"

Claim 9 as amended recites in part "call the client-side tracking code to execute and initiate a tracking event with a tracking system when the modified link is selected *to cause redirection to a corresponding location.*"

Claim 18 as amended recites in part "injecting client-side code into the requested web page, the client-side code being configured to run to initiate a tracking event when one of said modified selectable links is *clicked*"

Applicant asserts that these amendments clearly overcome the interpretation relied upon by the Examiner that hovering or remaining in an area is equivalent to the claimed features. As such, Ehrich fails to recite all the claimed features and accordingly the claims are not anticipated by Enrich.

As discussed in the previous response, Ehrich is directed at tracking time spent in an area or region and expresses no concern for tracking or modification of individual links. Further, Ehrich is silent regarding tracking occurring upon

selection of links and in fact includes disclosure which directly contradicts such tracking. For instance, Ehrich explicitly states that tracking is stopped when a link is selected. Enrich explicitly states that "<u>If the user selects link</u> 212, 214, or 216, and the selection instructs the client to request a new we page, <u>the collector program stops collecting user event data</u> and sends the amount of time the user's pointing device remained in region A 210 prior to the new page request." *Ehrich, paragraph [0035]*. Ehrich is simply directed to different techniques than the claims as presently recited.

In contrast to the presently recited features of claims 1, 9 and 18, focus in Ehrich is on regions and the tracking of the regions in Ehrich occurs <u>prior to link selection and terminates upon selection of a link</u>. Thus, even if Ehrich tracks hovering, tracking in Ehrich <u>stops</u> when user selects link or make a new web page request. Thus, Ehrich fails to disclose, teach or suggest all the features of the claims as presently recited. In fact, Ehrich *teaches away* from the features of the claims as presently recited by explicitly stating that tracking stops when a link is selected. Accordingly, claims 1, 9 and 18 and their respective dependent claims are allowable for at least these reasons and withdrawal of the §102 rejection is respectfully requested.

35 U.S.C. §103

Claims 2-3, 7, 10-11, 15, 20-21, and 25-26 are rejected under 35 U.S.C. §103(a) as being un-patentable over Ehrich in view of U.S. Patent Publication No. 2002/0165955 A1 ("Johnson").

Claim 24 is rejected under 35 U.S.C. §103(a) as being un-patentable over Ehrich in view of U.S. Patent Publication No. 2003/0177226 A1 ("Garg").

Claims 16-17 are rejected under 35 U.S.C. §103(a) as being un-patentable over Ehrich in view of U.S. Patent Publication No. 2004/0215715 A1 ("Mogul").

Each of these rejections is based upon Ehrich and the asserted features discussed above with respect to claims 1, 9, and 18. As discussed above Ehrich does not in fact describe the features for which it is relied upon by the Office. None of Johnson, Garg, or Mogul corrects the above described defects in Ehrich.

Each of claims 2-3, 7, 10-11, 15-17, 20-21, and 24-26 incorporates the features of the respective base claim from which it depends and is allowable a least based upon this dependency, as well as for its own recited features which the references of record fail to disclose, teach, or suggest. Accordingly, withdrawal of the §103 rejections of these claims is respectfully requested.

35 U.S.C. §103

Claims 1, 6, 8-9, 12, 14, and 18-19 are rejected under 35 U.S.C. §103(a) as being un-patentable over U.S. Patent Publication No. 2003/0174882 ("Lorenz") in view U.S. Patent No. 5,796,952 ("Davis").

MS-303957.01

Claims 2-5, 7, 10-11, 13, 15, 20-23, and 25-26 are rejected under 35 U.S.C. §103(a) as being un-patentable over Lorenz in view of Davis in further view of Johnson. Applicant respectfully disagrees.

The arguments made in the Response submitted 5/7/07 are incorporated herein by reference. As discussed in the previous Response, the combination of Lorenz and Davis fails to disclose, teach or suggest the subject matter of Applicant's claims. Further, sufficient motivation for the proposed combinations is lacking at least because (1) Lorenz teaches away from the combination; and (2) the combination would result in an impermissible modification to an operating principle of Lorenz.

In response to the arguments presented in the Response submitted 5/7/07, the Examiner in the Office Action on p. 29-30 asserts that (1) the proposed combination does not defeat the purpose of Lorenz and (2) even though Lorenz explicitly describes server side tracking and Lorenz explicitly describes tracking that occurs without using software side modifications, it is ok to combine Lorenz with the client side software of Davis. In essence, the Examiner argues in that one can use the techniques of Davis to client side track and the techniques of Lorenz to server side track without defeating the purpose of Lorenz, because both client side and server side tracking may be performed. Even if this is true, using the techniques of different references individually to perform their individual functions separately is not even a combination of the references. If Lorenz is limited to server side tracking as the Examiner's reasoning suggests, then the

acknowledged deficiencies of Lorenz (*Office Action, p. 19*) are not corrected by Davis operating separately from Lorenz to perform client side tracking.

Further, the Examiner's reasoning ignores the explicit and exclusive teachings of Lorenz which disparage user side or client side tracking. This is clear even from the title of Lorenz which is "User Tracking in A Web Session Spanning Multiple Resources <u>Without Need to Modify User-Side Hardware or Software or To Store Cookies At User Side Hardware</u>". Given this title, it simply cannot be refuted that Lorenz explicitly teaches against modifications at the user side. Lorenz is directed explicitly and exclusively to server side tracking. Thus, one of skill in the art would not combine Lorenz, which the examiner acknowledges is directed at server side tracking that occurs without using software side modifications, with Davis, which the examiner acknowledges is directed at client side software. To do so would require modifications to client side software in direct contradiction to the teachings of Lorenz.

As the Examiner is likely aware, a factor cutting against a finding of motivation to combine or modify the prior art is when the prior art *teaches away* from the claimed combination. A reference is said to *teach away* when a person or ordinary skill, upon reading the reference, would be <u>led in a direction divergent from the path that the applicant took</u>. *In re Gurley, 31 USPQ 2d 1130, 1131 (Fed. Cir 1994).* The title of Lorenz which includes the statement "Without Need to Modify User-Side Hardware or Software or To Store Cookies At User Side Hardware" definitely would lead one of skill in the art away from tracking

techniques which employ user side modification and/or client side software, such as in the claims as presently recited.

Additionally, the proposed combination of Lorenz and Davis would result in an impermissible modification of a principle of operation of Lorenz. If the proposed combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).* As discussed on p. 26 of the previous Response, the combination of Lorenz with the client side code of Davis runs counter to the express statement of Lorenz that it is an object to develop techniques "**without a need to make changes at user-side hardware or software, or to use cookies**". *Lorenz, paragraph [0014].* The APT gateway server and associated features of Lorenz are operational principles which are essential in Lorenz to achieve a stated object. Not only is Lorenz not interested in loading code on the client, doing so would impermissibly modify Lorenz. This is because Lorenz relies exclusively on the APT gateway server to perform tracking functions and disparages client side modifications. Using client side tracking code, the functionality of this APT gateway server would be altered or removed and thus the essential features of Lorenz would be defeated. Thus, the proposed combination would impermissibly modify a principle upon which Lorenz operates.

Further, the combination of Lorenz and Davis fails to disclose, teach or suggest the recited features of the Applicant's claims.

In making out the §103 rejection, Examiner relies upon the "loaded links" of Lorenz. *Office Action, p. 18.* As argued in the previous Response at p. 21, the loaded links of Lorenz perform a different function and are simply not equivalent to the recited features of claim 1. A loaded link pointing/redirecting to a gateway, is not the same as a modified link that contains a tracking identifier for use in a tracking system an which is "to initiate the client-side tracking code to execute a tracking function that records information related to the corresponding selectable link in a log file." Thus at least this feature is lacking from the proposed combination.

Further, the Examiner also relies upon an agenda script of Lorenz, as discussed beginning on p. 22 of the previous Response. However, the agenda script does not perform these functions for which it is relied upon. Rather, Lorenz simply describes that the agenda script acting to replace any or all URLS in the document with loaded links. *Lorenz, paragraph [0064].* This global link loading performed by the agenda script in Lorenz is not functionally equivalent to the claimed features. Lorenz is entirely silent as to the agenda script inspecting "to determine if the one or more selectable links contain a link identifier" and replacing links "identified as containing the link identifier". No determination or identification of link identifiers within the links, or replacement based thereupon, is described in Lorenz. Further, since any or all URLS are replaced in Lorenz, such determination and identification is not useful. Thus, while the agenda script

performs link loading, this is not equivalent to the features of the claims as presently recited.

In Lorenz, the tracking, the loaded links, the agenda script, the link loading and so forth, are all configured such that the tracking functionality <u>occurs at the APT gateway/server,</u> e.g., server side. Thus, tracking in Lorenz in performed in an entirely different manner than in claim 1. While Davis does describe tracking client interaction with a network resource, Davis does not correct the above noted defects in Lorenz. Thus, the proposed combination of Lorenz and Davis fails to disclose, teach, or suggest all the recited features of independent claims 1, 9 and 18.

For at least the foregoing reasons, withdrawal of the §103 rejections of claims 1, 6, 8-9, 12, 14, and 18-19 is respectfully requested.

35 U.S.C. §103

Claims 2-5, 7, 10-11, 13, 15, 20-23, and 25-26 are rejected under 35 U.S.C. §103(a) as being un-patentable over Lorenz in view of Davis in further view of Johnson.

Claim 24 is rejected under 35 U.S.C. §103(a) as being un-patentable over Lorenz in view of Davis in further view of Garg.

Claims 16-17 are rejected under 35 U.S.C. §103(a) as being un-patentable over Lorenz in view of Davis in further view of Mogul.

Each of these rejections is based upon the proposed combination of Lorenz in view of Davis and the asserted features discussed above with respect to claims 1, 9 and 18. As discussed above Lorenz in view of Davis does not in fact teach or suggest the feature for which it is relied upon by the Office, and motivation for the proposed combination is lacking. None of Johnson, Garg, or Mogul corrects the above described defects in the proposed combination of Lorenz in view of Davis.

Each of claims 2-3, 7, 10-11, 15-17, 20-21, and 24-26 incorporates the features of the respective base claim from which it depends and is allowable a least based upon this dependency, as well as for its own recited features which the reference of record fail to disclose, teach, or suggest. Accordingly, withdrawal of the §103 rejections of these claims is respectfully requested.

Conclusion

Claims 1-26 are in condition for allowance and the Applicant respectfully requests reconsideration and prompt issuance of the present application. Should any issue remain that prevents immediate issuance of the application, the Examiner is requested to contact the undersigned attorney to discuss the unresolved issue.

Respectfully submitted,

Date: _____8/20/07_____   By: ___/Daniel T. McGinnity, #55444/___
                                    Daniel T. McGinnity
                                    Reg. No. 55444
                                    Attorney for Applicant

                                    Sadler, Breen, Morasch & Colby, PS
                                    422 W. Riverside Avenue, Suite 424
                                    Spokane, Washington 99201
                                    Telephone: (509) 755-7257
                                    Facsimile: (509) 755-7252

MS-303957.01